

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5106-2022(O&M)

Date of decision:-7.12.2022

Surjit Singh through his LR

...Petitioner

Versus

Smt.Phoolwati through her LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Deepkaran Dalal, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

1. Briefly stated, facts of the case are that plaintiff Smt.Phoolwati and others, residents of village Baghola, Tehsil Palwal, District Faridabad and other plaintiffs in different suits had brought civil suits seeking declarations with possession as a consequential relief against various defendants. Civil Suit No.318 of 1993 titled 'Smt.Phoolwati and others Versus Smt.Chandra and others' was treated as main suit and facts of that case were mentioned.

2. As per the case of the plaintiffs, they have become owners of agricultural land measuring 2 kanals 9 marlas situated at village Seikhpur; the suit land was mortgaged with possession with the predecessors-in-interest of plaintiffs more than 60 years back, which was not got redeemed and right to redeem had been lost on account of expiry of period of redemption; during the period of mortgage one Smt.Gulab Kaur was

mortgagee in possession of the suit land and she was succeeded in law by plaintiff No.1 Smt.Phoolwati wife of Sh.Kesariya and Smt.Budho daughter of Jamna Lal; Smt.Budho had died and plaintiffs No.2 to 8 are her legal heirs and successors-in-interest; defendants No.1 to 15 are recorded as mortgagors, whereas defendant No.16 is wrongly recorded as mortgagee and defendant No.16 has no right, title or interest in the suit land and it was wrongly mutated in favour of defendant No.16 i.e. Haryana State Government by way of escheat vide mutation No.21 decided on or about behind the back of Smt.Budho and Smt.Phoolwati – daughters and Smt.Chameli wife of Jiwan Lal in collusion with the then recorded mortgagors; the said mutation was sanctioned without notice and knowledge of the heirs and successors of Smt.Gulab Kaur, therefore does not confer any right or title on defendant No.16 and mutation is liable to be set aside; defendants No.1 to 15 had not got the suit land redeemed within period fixed for redemption by law, in that way the plaintiffs have become owners of suit land.

3. The other four suits filed against other defendants are almost on the similar lines wherein the plaintiffs claimed to have become owners of the land, which is subject matter of those suits by efflux of time due to extinguishment of right of redemption of mortgagors. All the five suits were consolidated and it was decided that evidence shall be recorded in the main suit i.e. Civil Suit No.318 of 1993.

4. Notice of the suits had been given to defendants but they did not appear despite service, as such the were proceeded against ex-parte. During the evidence of the plaintiffs, Gurdayal Gur Dutt appeared as PW1

and Sarup Singh as PW2. Thereafter, the counsel for the plaintiffs tendered in evidence documents Ex.P1 to Ex.P37 on 31.1.1996 and Ex.P38 to Ex.P63 on 9.5.1996 in additional evidence.

5. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Palwal vide judgment dated 21.5.1996 concluded that the suit land had not been redeemed with the stipulated period, as such the plaintiffs had become owners of the suit land. A decree for possession was also passed in each suit in favour of the plaintiffs against the defendants. The suit had been decreed *ex parte*.

6. Subsequently, Motha Singh son of Malha Singh, Inder Singh, Pala Singh, Surjit Singh sons of Punjab Singh son of Ujagar Singh, residents of village Sekhpur, Tehsil Palwal, District Faridabad filed an application under Order 9 Rule 13 CPC for setting aside of *ex parte* decree dated 21.5.1996 and *ex parte* proceedings initiated vide order dated 11.10.1994 on behalf of defendants No.1 & 4 and LRs of defendants No.2 and 3. As per the version of the applicants, they were never served in any manner and the plaintiffs have deliberately given incorrect addresses of defendants so as to procure a decree in their favour; as a matter of fact, the applicant/defendants are residing at Mala Singh Farm in village Baghpur Kalan permanently since the year 1950 and they have never resided in village Shekhpur; no proclamation/munadi was ever done in the village where the defendants reside and on the basis of false report on the summons of munadi, the Court directed that the defendants be proceeded against *ex parte* vide order dated 11.10.1994; the defendants came to know about existence of *ex parte* judgment and decree dated 21.5.1996

for the first time on 8.5.2006, in that way their non-appearance in the civil suit was not intentional or wilful. Therefore, the order passed by the trial Court declaring the defendants to be duly served and then proceeding against them ex-parte and further ex-parte judgment and decree passed are liable to be set aside.

7. On notice, the respondents/plaintiffs appeared and filed written reply on 25.9.2007 contending that the application is barred by time and the applicants are guilty of concealment of true facts; as a matter of fact, the applicants/defendants were duly served through agency of the Court and they were legally and validly proceeded against ex-parte on 11.10.1994 and later on decree dated 21.5.1996 was properly passed in their favour; the ex-parte judgment and decree has already been executed and the respondents/plaintiffs have taken possession of the suit land; the allegations of the plaintiffs having played a fraud with the Court by colluding with the Process Server and preparing a false report were dubbed as wrong and incorrect. The respondents/plaintiffs prayed for dismissal of the application. Following issues were framed for the purpose of effective decision of the application:

1. Whether the impugned judgment and decree dated 21.5.1996 and ex-parte order dated 2.3.1994 are liable to be set aside on the grounds as alleged?OPP.

2. Relief.

8. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

9. After hearing arguments, the trial Court decided issue No.1

against the applicants and in favour of respondents, issue No.2 was decided against the applicants/defendants. Resultantly the application was dismissed vide order dated 8.4.2011.

10. Feeling aggrieved, the applicant/defendants had preferred an appeal before District Judge, Palwal, which was assigned to Additional District Judge, Palwal, who vide judgment dated 21.2.2014 dismissed the appeal.

11. Now such applicant/defendants have approached this Court by way of filing a revision petition.

12. I have heard learned counsel for the petitioners besides going through the record and I find that there is no merit in the revision petition.

13. The impugned judgment in this case was passed on 21.5.1996 by the trial Court of Civil Judge (Jr.Divn.) Palwal, whereas the application for setting aside of ex-parte judgment and decree was filed on behalf of defendants No.1 to 4 on 16.5.2006 i.e. after a period of about 10 years. No satisfactory reason for such delay has been given or proved. The limitation for filing of application for setting aside of ex-parte proceedings/decrees is 30 days, whereas the application in this case has been filed highly belatedly i.e. after about 10 years without giving any probable or plausible explanation for the delay. The reasoning given that the applicants were not served in this case and plaintiffs had manipulated a false report and then managed to get the applicant/defendants proceeded against ex-parte does not appeal to reason. The trial Court considering the facts and circumstances of the case in view of the factual and settled legal position, had observed that summons Ex.D1 to Ex.D4 had been served

upon the applicants at village Shekhpur, the delivery report of these summons shows “refusal” on the part of applicants from receiving the summons, thereafter munadi Ex.D5 was directed to be carried out; the munadi was conducted at village Shekhpur, where the suit property is situated. The application so moved is highly time barred having been filed after 12 years from the date when they were proceeded against ex-parte on 11.10.1994. The applicants had not filed any application under Section 5 of the Limitation Act for condonation of delay in filing the application. Their plea raised by them that they came to know about ex-parte judgment and decree from the plaintiffs/respondents on 8.5.2006 was found to be least convincing. Giving reference to a case law on the subject, learned trial Court had observed that the Civil Court has no power to set aside the ex-parte judgment and decree if none of the conditions comprised in Order 9 Rule 13 is fulfilled. The trial Court did not see any reason to set aside the ex-parte order as well as ex-parte judgment and decree passed against the applicants/defendants observing that firstly the application filed by them is highly belated having been filed after about 12 years of passing of ex-parte judgment and decree and on merits also the applicants have failed to show that they were not served in this case and they were wrongly proceeded against ex-parte.

14. When this order was challenged in appeal before Additional District Judge, Palwal, she after due application of mind did not find any merit in the application. Learned Additional District Judge, Palwal has observed that alleged acquisition of knowledge also cannot come to the rescue of the defendants as they had not given any details as to how and

under what circumstances did the knowledge came to them at the magical date of 6.1.1999. Thus application so moved by applicants/defendants No.1 to 4 was rightly rejected by the trial Court of Civil Judge (Jr.Divn.), Palwal and the appeal filed by the applicant/defendants No.1 to 4 was rightly rejected.

15. I find that no fault can be found with the order/judgment passed by the courts below and no reason is there to interfere with the impugned order/judgment, which are detailed and well reasoned not suffering from any infirmity and illegality.

16. Thus, finding no merit in the civil revision petition, the same stands dismissed.

Since the main revision petition stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

7.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No